

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION**

Keymore D. Barnwell,)
)
Plaintiff,) Civil Action No. 0:21-cv-3684-TMC
)
vs.) **ORDER**
)
A. Smith,)
)
Defendant.)
_____)

Plaintiff Keymore D. Barnwell, a pretrial detainee proceeding *pro se* and *in forma pauperis*, filed this action pursuant to 42 U.S.C. § 1983, alleging Defendant subjected him to excessive force in violation of his constitutional rights. (ECF Nos. 1; 11). In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2)(d), (e) (D.S.C.), this matter was automatically referred to a magistrate judge for all pretrial proceedings. Now before the court is the magistrate judge's Report and Recommendation ("Report"), (ECF No. 82) concluding that Plaintiff failed to properly exhaust his administrative remedies and recommending that the court grant Defendant's motion for summary judgment (ECF No. 58) on that basis. On September 23, 2022, the Report was mailed to Plaintiff at the Greenville County Detention Center ("GCDC") address he provided the court. (ECF No. 83). Plaintiff was advised of his right to file specific objections to the Report, (ECF No. 82 at 6), but the time for Plaintiff to object to the Report expired without Plaintiff filing any objections.

On October 3, 2022, the Report was returned to the court marked as undeliverable to Plaintiff at the GCDC address provided and unable to be forwarded. (ECF No. 84-1). It appears Plaintiff is now incarcerated at Evans Correctional Institution ("ECI") in Bennettsville, South Carolina. Out of an abundance of caution, the court *sua sponte* directed the clerk of court to mail

another copy of the Report, as well as a copy of the court’s order granting Plaintiff an extension of time until December 16, 2022 to file objections, to Plaintiff at ECI. (ECF No. 87). Neither the Report nor the order granting additional time to object have been returned as undeliverable. Accordingly, Plaintiff is presumed to have received the Report and notice of his right to object. Plaintiff has not filed objections, and the extended deadline for doing so has expired.

The magistrate judge’s recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. *Wimmer v. Cook*, 774 F.2d 68, 72 (4th Cir. 1985) (quoting *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976)). Nevertheless, “[t]he district court is only required to review *de novo* those portions of the report to which specific objections have been made, and need not conduct *de novo* review ‘when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate judge’s proposed findings and recommendations.’” *Farmer v. McBride*, 177 Fed. App’x 327, 330–31 (4th Cir. April 26, 2006) (quoting *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982)). Thus, “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 Advisory Committee’s note). The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, in the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Greenspan v. Brothers Prop. Corp.*, 103 F. Supp. 3d 734, 737 (D.S.C. 2015) (citing *Camby v. Davis*, 718 F.2d 198, 199–200 (4th Cir. 1983)). Furthermore, failure to file specific written objections to the Report results in a party’s

waiver of the right to appeal the district court's judgment based upon that recommendation. *See Martin v. Duffy*, 858 F.3d 239, 245 (4th Cir. 2017).

Having reviewed the Report and the record and, finding no clear error, the court agrees with and wholly **ADOPTS** the magistrate judge's findings and recommendations in the Report (ECF No. 82), which is incorporated herein by reference. Accordingly, Defendant's motion for summary judgment is **GRANTED**. (ECF No. 58). All other pending motions are, therefore, **DENIED AS MOOT**.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

Anderson, South Carolina
December 19, 2022

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.